IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/11/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.8764 OF 1997.

S.Kumaran ... Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai-600 104.

2. The Management
K.Cone Products
2C/9/1(SP) III Main Road,
Ambattur,
Chennai-600 058. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.S.Kumarasamy

^For R.2 : Mr.Meenakshi Sundaram

:O R D E R
The above Writ Petition has been filed by the petitioner praying to issue a Writ of Certiorari to call for the records from the file of the first respondent in I.D.No.735 of 1991 and quash the Award dated 2 2.11.1996 thereby rejecting the claim of the petitioner for reinstatement in service with backwages, with continuity of service and with all other attendant and consequential benefits.

2. The case of the petitioner is that he joined the services of the second respondent in the year 1982; that he was terminated from service on 4.2.1991 without any valid reason; that by a letter dated 12.3.1991, he requested the second respondent for reinstatement; that he has also raised an Industrial Dispute against his non-employment under the Industrial Disputes Act; that the second respondent, without giving any reply to his letter dated 12.3.1991 has filed its remarks before the Conciliation Officer to the effect that the petitioner had abandoned services on his own accord and it is not a case of termination of service; that upon failure of conciliation proceedings,

he moved the Labour Court under section 2A(2) of the Industries Disputes Act, which was taken on file as I.D.No.735 of 1991 by the first respondent.

3. The further case of the petitioner is that the second respondent, in their counter statement filed before the first respondent, developed a new case by stating that the petitioner was dismissed from service by their letter dated 4.3.1991 after holding a domestic enquiry; that the first respondent having examined the petitioner as W.W.1 and having marked four documents on the side of the petitioner, further having examined one witness on the side of the second respondent as M.W.1 and having marked 14 documents and having considered the oral and documentary evidence placed before it, has passed the impugned Award on 22.11.1996 dismissing the Industrial Dispute holding that the petitioner is not entitled to any relief. Aggrieved by the said Award, the petitioner has come forward to file this writ petition praying for the relief extracted supra.

4. During arguments, the learned counsel for the petitioner would submit that the documents filed by the second respondent before the first respondent in Exs.M1 to M14 viz. the enquiry proceedings, findings, the second show cause notice, the order of dismissal were not served on the petitioner; that these documents are fabricated with a view to build up a new case; that the second respondent has not explained before the first respondent as to how it had taken the early stand of abandonment with regard to his non-employment and as to how subsequently altered it to one that of dismissal; that the second respondent had not established before the first respondent that it had conducted an enquiry after putting him on notice and affording opportunity to him before it had dismissed him from service. At this juncture, the learned counsel for the petitioner would cite a judgment of this Court delivered in SUNDARESAN vs. DEPUTY COMMISSIONER OF LABORU (APPEAL), MADRAS reported in 2004(2) L.L.N. 390 wherein a learned single Judge of this Court referred to an earlier judgment of another learned single of this Court in MANAGEMENT OF HACKBRIDGE HEWITTE AND EASUM, LTD., TIRUVOTTIYUR, MADRAS (REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR) VS. PRESIDING OFFICER, FIRST ADDITIONAL LABOUR COURT, MADRAS AND ANOTHER reported in 1984 Writ.L.R.58 wherein it has been held that 'the abandonment with regard to service matters is not a naove conception and it is of a much serious consequence because on this basis, the relationship of master and servant is sought to be snapped' and having observed that there is no evidence to show that the workman had voluntarily abandoned from service, has ordered reinstatement of the workman with backwages and other attendant benefits. On such arguments, the learned counsel for the petitioner would pray for the relief extracted supra.

5. On the contrary, on the part of the second respondent Management, the learned counsel appearing on its behalf would only reiterate those points putforth before the labour Court further sailing along with the Award of the Labout Court without bringing any new fact or circumstance or law and therefore tracing the same will only be the repetition of those materials which are already on record. However, the learned counsel would point out that though it is an admitted fact that the petitioner joined the second respondent Management in the year 1 982, he was not in service continuously as it has been shown on the part of the petitioner and only on 4.2.1991, as

though he was terminated from the service without any valid reason, he has filed this writ petition; that in the year 1986, he voluntarily resigned the job and rejoined in 1988 and because he created a problem inside the campus by assaulting a co-worker, a domestic enquiry was held and in spite of notice, since the petitioner did not defend himself, the second respondent was left with no option but to decide the enquiry exparte, ultimately ending in dismissal of the petitioner from service from 4.3.1 991 onwards; that the Labour Court in its vivid order has brought forth all the truth behind the petitioner's malfeasance; that the judgment cited by the petitioner since being on different set of facts is not applicable to the case in hand and on such arguments, would seek to dismiss the above writ petition with costs.

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the second respondent as well, it could be assessed that the petitioner has come forward to seek to quash the Award passed by the first respondent Labour Court in I.D.No.735 of 1991 dated 22.11.1996 thereby rejecting the claim of the petitioner for reinstatement in service with backwages and continuity of service and with all attendant and consequential benefits.

7. A careful perusal of the materials made available on record particularly the pleadings before the labour Court and the evidence let in by parties, it comes to be seen that the petitioner himself has admitted before the Labour court about his voluntary resignation of the job in the year 1986 and rejoining after a couple of years on certain terms. However, it could be seen that the resignation tendered on the part of the petitioner and rejoining duty has been suppressed in the writ petition and it is shown as though he was in continuity of service from the date of his appointment in the year 1982. This would only show that the petitioner has not come to the Court with clean hands and with all facts and circumstances for a valid decision to be arrived at by the Court.

8. The Labour Judge has seen that the plea of the petitioner that there was no domestic enquiry held for his termination to be false and on the contrary for his misbehaviour in the campus due to assaulting a co-worker, an explanation was sought for and an enquiry was initiated and since there was no cooperation on the part of the petitioner for the conduct of enquiry, in spite of proper notice calling for him to partake the enquiry, he absented resulting in an exparte order to be passed by the disciplinary authority pursuant to the findings of the Enquiry Officer thereby dismissing the petitioner from service and therefore the exparte order was not an order without opportunity as it has been told of now and the Labour Judge would find that only the petitioner has not made use of the opportunity and therefore would make it clear that it is not a case without opportunity or denial of opportunity for the workman and would justify the dismissal of the petitioner by the Management and since the Labour Judge did not find any valid ground or reason for he petitioner to offer for the grant of the relief sought for in the Industrial Dispute, he would ultimately dismiss the same as per the Award dated 22.11.1996.

9. This Court does not find any serious error of law or legal infirmity or inconsistency in the Award passed by the Labour Court whether regarding the conclusions arrived at on the part of the Labour Court or the manner in which such conclusions have been arrived at by the Labour Judge

below and therefore this Court does not find any valid or tangible reason existing to cause its interference into the well considered and merited Award passed by the Labour Judge below and hence the following order:
In result,
(i) the above Writ Petition fails and the same is dismissed.
(ii) The Award dated 22.11.1996 made in I.D.No.735 of 1991 by the court of Principal Labour Judge, Chennai is hereby confirmed.
However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

gr/Rao

To
The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai-600 104.
V.KANAGARAJ, J.